IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 19TH FEBRUARY 2007 / 30TH MAGHA 1928

WP(C).No. 27543 of 2006(D)

PETITIONER:

M.KRISHNAN, S/O.MADHAVAN,
AGED 64, RESIDING AT MAKAYIRAM,
EDAKODE P.O., KIZHUVILAM, CHIRAYINKEEZHU TALUK,
THIRUVANANTHAPURAM.

BY ADV. SRI.J.S.AJITHKUMAR

RESPONDENTS:

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1. EDAKODE SERVICE CO-OPERATIVE BANK LTD.,
REG.NO.2523 REPRESENTED BY ITS SECRETARY,
EDAKODE P.O., KIZHUVILAM, CHIRAYINKEEZHU,
THIRUVANANTHAPURAM.

2. THE PRESIDENT, EDAKODE SERVICE
CO-OPERATIVE BANK LTD., REG.NO.2523, EDAKODE
P.O., KIZHUVILAM, CHIRAYINKEEZHU,
THIRUVANANTHAPURAM.

3. THE CO-OPERATIVE ARBITRATION COURT,
THIRUVANANTHAPURAM.

BY ADV. SRI.V.G.ARUN
SRI.T.R.HARIKUMAR
BY SENIOR GOVERNMENT PLEADER SHRI P.K. RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE JUDGMENT DATED 28.6.1999 IN O.P. NO.15842/99 ON THE FILE OF THE HONOURABLE HIGH COURT.

EXHIBT P2 TEU COPY OF THE AWARD DATED 11.9.2006 IN ARC NO.31/2003 ON THE FILE OF THE THIRD RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

K. PADMANABHAN NAIR, J.

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W.P(C). NO. 27543 OF 2006

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Dated this the 19th day of February, 2007

J U D G M E N T

Writ Petition is filed to quash Exhibit P2 award passed by the Co-operative Arbitration Court, Thiruvananthapuram, in ARC No.31 of 2003. Petitioner was working as a Clerk in the first respondent Society. Subsequently, he was holding the charge of the Secretary also. But the Bank did not promote him as a Secretary. So he filed a petition before the Assistant Registrar of Co-operative Societies under Section 69 of the Co-operative Societies Act. There was delay in disposing of the petition. So petitioner filed O.P. No.15842 of 1999 before this Court for a direction to the Assistant Registrar of Co-operative Societies to hear and dispose of the petition on its merits. This Court by judgment dated 28.6.1999 disposed of the Writ Petition, the operative portion of which reads as follows:

> "In the circumstances of the case, I direct the first respondent to dispose of Ext.P1 with notice to concerned parties, as expeditiously as possible, in any event, within four months from the date of receipt

> of a copy of this judgment. Since I am only directing to dispose of Ext.P1 petition, I am not expressing any opinion regarding merits of the case".

2. Subsequent to the amendment of Section 69 of the Act, petition filed by the petitioner was transferred to Arbitration Court and numbered as ARC No.31 of 2003. In the meanwhile petitioner retired from service. Arbitration Court took a view that though there is a claim for monetary benefits since the petitioner retired from service the same became infructuous and for that benefits he will have to file a separate suit.

3. Heard both sides.

4. The view taken by the Arbitration Court is illegal. Even assuming that the first relief sought for in the plaint by the petitioner is to promote him as Secretary is not possible, still the other relief regarding monetary benefits ought to have been considered. It is not just and proper to drive the parties to a fresh suit in this regard at this stage. Since the award passed is illegal, this is a fit case in which this Court can interfere though an

alternative remedy is available. The issue is pending from 1999 onwards. So there is absolutely no justification in directing the parties to approach the Tribunal and then wait for a decision.

In the result, Writ Petition is allowed. The award passed by the Arbitration Court in ARC No.31 of 2003 is hereby set aside. The Presiding Officer of the Co-operative Arbitration Court, Thiruvananthapuram is directed to take ARC No.31 of 2003 back to file, consider the same and pass fresh award in accordance with law, as expeditiously as possible, at any rate, within a period of six months from today.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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. R.P. NO.

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O R D E R

4TH JANUARY, 2007